

## REMARKS

In the February 22, 2006 Office Action, claims 7-14, 16 and 17 were rejected under 35 USC § 102; and claim 15 was rejected under 35 USC § 103.

Claims 7, 10, 11 and 13 are herein amended and claims 12 and 17 are herein canceled. Claims 7-11 and 13-16 are pending and under consideration. The rejections are respectfully traversed below.

### Rejections under 35 USC 102

In item 3 on pages 2-3 of the February 22, 2006 Office Action, claim 7 was rejected under 35 USC §102(e) as anticipated by Ellington (US Patent 6,175,569). Claim 7 as amended recites "a user computer, connected to the network, ... including an access unit which determines predetermined quality of service features" (claim 7, lines 2-3) and "a service provider computer, connected to the network, to perform one of enabling, disabling, altering and adding quality of service features in said access unit" (claim 7, lines 5-7). In an exemplary embodiment described in the Substitute Specification, a "first computer is a terminal of a user and ... [a] second computer is ... a unit of a service provider" (see paragraph [0007]) and the "first computer has an access unit which is used to determine predetermined quality of service features" while the 'second computer ... administers the quality of service features of the access unit" (see paragraph [0006]).

What was cited in Ellington describes LAN stations including LAN adapters communicating with other LAN stations in an ATM network by way of LAN/ATM devices inserted between the LAN stations, where LAN data blocks include:

a priority field encoded with a particular priority value. The [LAN/ATM] device further includes logic for extracting the encoded priority value and for mapping it to a QoS associated with a particular ATM class of traffic. The [LAN/ATM] device responds to the mapped QoS value to initiate setup of an ATM connection having appropriate parameters

(Ellington, column 4, lines 5-11 and Abstract). Thus, Ellington discloses LAN stations communicating with other LAN stations by way of LAN/ATM devices in an ATM Token Ring Network where the LAN/ATM devices extract priority values for mapping QoS associated with a particular ATM class of traffic. A LAN/ATM device responding to a mapped QoS value to initiate setup of an ATM connection having appropriate parameters as taught by Ellington does not teach or suggest "a service provider computer ... perform[ing] one of enabling, disabling, altering and adding quality of service features in said access unit" (claim 7, lines 5-7) where the access unit is in a user's computer. In other words, initiating a set up of an ATM connection as described in

Ellington does not include any of "enabling, disabling, altering and adding quality of service features" as recited in claim 7.

Claim 7 as amended further recites "a database, connected to the service provider computer to determine which of the predetermined quality of service features are currently one of permissible and required for the user computer" (claim 7, last 3 lines). An example of such a database is described in paragraph [0022] of the Substitute Specification. What was cited in Ellington describes a LAN/ATM device containing a buffer for storing LAN data blocks received from the LAN station. Each data block (a.k.a. "frame") "includes a priority field encoded with a particular priority value. The [LAN/ATM] device further includes logic for extracting the encoded priority value and for mapping it to a QoS associated with a particular ATM class of traffic" (column 4, lines 5-11). A buffer located in a LAN/ATM device for mapping QoS for one of many classes of ATM traffic is different than a database accessed by a service provider computer "to determine which of the predetermined quality of service features are currently one of permissible and required for ... [a] user computer" (claim 7, last 3 lines).

As discussed above, nothing was cited or found in Ellington that teaches or suggests each element of claim 7. Thus, claim 7 is in condition for allowance. Dependent claims 8-11 and 13-16 depend from independent claim 7; thus, claims 8-11 and 13-16 distinguish over Ellington for at least the reasons discussed in regard to claim 7.

### **Rejections under 35 USC 103**

In items 12 and 13 on page 5 of the Office Action, claim 15 was rejected under 35 USC § 103(a) as unpatentable over Ellington in view of evidence alleged to be "well known" (Office Action, page 5, lines 11-13). As noted above, claim 15 patentably distinguishes over Ellington because it depends from claim 7.

In addition, the Applicant respectfully traverses the statement of "well known" evidence and demands the Examiner produce authority for the statement. The Applicant specifically points out the following errors in the reliance on "well known" evidence.

The alleged well known or Officially Noted fact that "conversion from a first protocol to a second protocol is effected in the access unit" as recited in claim 15 is not of notorious character or capable of instant and unquestionable demonstration as being well-known. The Examiner has failed to establish that an "access unit" in a user computer "which determines predetermined quality of service features for interaction with ... [a] network" is "capable of such instant and unquestionable demonstration as to defy dispute" (see MPEP § 2144.03(A)).

Furthermore, it appears that the Examiner also bases the rejection, at least in part, on personal knowledge as demonstrated by the assertion that "computers generally utilize the PCI protocol to communicate between components of a computer on a PCI bus; the LAN adapter would have the ability to convert the PCI protocol into the Token Ring protocol as used in the LAN" (Office Action, page 5, lines 16-18). Nothing in Ellington teaches or suggests a PCI (Peripheral Component Interconnect) local bus or any other type of bus that converts protocols as recited in claim 15. The Examiner is required under 37 CFR § 1.104(d)(2) to support such an assertion with an affidavit when called for by the Applicant. Thus, Applicant calls upon the Examiner to support the PCI based assertion with an affidavit or withdraw any rejection relying on such an assertion. For all of the above reasons, claim 15 patentably distinguishes over the cited prior art.

## CONCLUSION

It is submitted that Ellington and the alleged well known evidence either taken individually or combined together do not teach or suggest the features of the present claimed invention. Thus, it is submitted that claims 7-11 and 13-16 are in a condition suitable for allowance. Reconsideration of the claims and an early Notice of Allowance are earnestly solicited.

If there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

Finally, if there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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